IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3843 OF 2004

Sanmitra Sahakari Bhadekaru Malaki
Hakka Grihanirman Sanstha ..Petitioner.

Versus

Shri Dilip Prithviraj Kucheria & Ors. ..Respondents.

Mr. Uday Warunjikar for the petitioner.

Mr. C.G.Gavnekar for the Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 22nd SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith.

2. Mr. Gavnekar waives service of Rule for Respondent No.1.

3. Heard by consent.

4. The petitioner's society has challenged the judgment and order passed by the Divisional Joint

Registrar, upholding the order of the Dy. Registrar, directing the respondent No.1 to be enrolled as a member of the petitioner society. The Divisional Joint Registrar has by the impugned order directed the Respondent No.1 - D.P. Kucheria to be admitted as a member of the petitioner society. The Divisional Joint Registrar after considering the matter, came to the conclusion that there is no merit in the Society's contention that the plot of land which has been transferred by Shri Rao to the respondent No.1 has been transferred in the name of the applicant society. Having found that the respondent No.1 submitted the application for membership alongwith the amount towards share and entry fees and all the other necessary documents, the Divisional Registrar has been satisfied that the property has been validly transferred in the name of the Respondent No.1 - Mr. D.P. Kucheria.

5. The Divisional Joint Registrar also rejected the society's contention that there is no plot for allotment to the respondent No.1. There is clear finding that the respondent No.1 had paid consideration for the said plot of land. Indeed all the requirements of membership having been satisfied,

it was not open for the society to refuse admission to the respondent No.1 in view of section 23(1) of the Act, which reads as follows :-

> "23. Open membership.--(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.

6. Mr. Warunjikar, the learned counsel for the petitioner society strongly contended that the authority has not taken into account the petitioner's allegation that the respondent's application for membership never come up before the Managing Committee of the society for decision and hence, there cannot be any refusal of membership. This submission does not help the petitioner society since in that case the matter would be covered by the provisions which grants deem membership to the members who have applied but whose application for membership has not been decided within a period of two months, as provided by section 23(1A) of the Act.

7. Mr. Gavnekar, the learned counsel for the respondents further points out that the aforesaid contention is not borne out by the record of the case. In fact in the reply to the Dy. Registrar of the Society, the petitioner Society has categorically stated in paragraph- 1 of the reply that they have decided not to grant membership to the respondent No.1 because the society has no plot to allot to him and therefore, he cannot be admitted as a member.

8. In the circumstances, I am of view that there is no merit in the petition, which is liable to be dismissed. It is hereby dismissed.

9. Rule is discharged with no order as to costs.

DT.22.09.05 (S.A.BOBDE,J)

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